Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Reference no.:
App_25616/2025
APL_9720/2025 APL_9633/2025
UPC_CoA_178/2025 UPC_CoA_176/2025

App_25615/2025
APL_9718/2025 APL_9611/2025
UPC_CoA_177/2025 UPC_CoA_175/2025

Decision

of the Court of Appeal of the Unified Patent Court
concerning an application for the withdrawal of the action
issued on 3 July 2025

HEADNOTE

- A court fee is required for an appeal against a decision in a revocation action, as well as for an appeal against a decision on a counterclaim for revocation, since revocation actions and counterclaims for revocation are separate actions (cf. Art. 32(1) UPCA). The fact that the Court of First Instance combined its decisions in the two actions in a single document, does not alter this assessment.

KEYWORDS

Appeal; withdrawal on an action; court fees

APPELLANTS (CLAIMANT AND COUNTERLCLAIMANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1. **ADVANCED BIONICS AG**
Laubisrütistraße 28, 8712 Stäfa, Switzerland

2. **ADVANCED BIONICS GMBH**
Max-Eyth-Straße 20, 70736 Fellbach-Oeffingen, Germany

3. **ADVANCED BIONICS SARL**
9 rue Maryse Bastié, CS 90606 - 69675 Bron Cedex, France

hereinafter jointly: Advanced Bionics

represented by attorney-at-law Miriam Kiefer and other representatives of Kather Augenstein Rechtsanwälte PartGmbB and Dehns

RESPONDENT (DEFENDANT AND COUNTERDEFENDANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

MED-EL ELEKTROMEDIZINISCHE GERÄTE GESELLSCHAFT m.b.H.
Fürstenweg 77a, 6020 Innsbruck, Austria

hereinafter: MED-EL

represented by attorney-at-law Dr. Michael Rüberg and other representatives of Boehmert & Boehmert

PATENT AT ISSUE
EP 4 074 373

PANEL AND DECIDING JUDGES
Panel 1a
Klaus Grabinski, President of the Court of Appeal
Peter Blok, legally qualified judge and judge-rapporteur
Emanuel Gougé, legally qualified judge

LANGUAGE OF THE PROCEEDINGS
English

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE
Decision of the Central Division, Paris seat, of 26 December 2024
Reference numbers: ACT_ 576555/2023 UPC_CFI_338 /2023
ORD_598503/2023
and
CC_15513/2024
ORD_59103/2024

FACTS AND REQUESTS OF THE PARTIES

1. On 27 September 2023, Advanced Bionics AG commenced an action for revocation of European Patent 4 074 373 (hereinafter: the patent at issue) against MED-EL before the Central Division, Paris seat (ACT_576555/2023 UPC_CFI_338/2023) (hereinafter: the revocation action).

2. On 2 November 2023, MED-EL commenced an action for infringement of the patent at issue against Advanced Bionics GmbH and Advance Bionics Sarl before the Mannheim Local Division (ACT_585052/2023 UPC_CFI_410/2023). Advanced Bionics GmbH and Advance Bionics Sarl lodged a counterclaim for revocation (CC_15513/2024)(hereinafter: the counterclaim for revocation).

3. By order of 10 July 2024, the Mannheim Local Division referred the counterclaim for revocation to the Central Division for decision.

4. By decision of 26 December 2024, the Central Division rejected the revocation action and the counterclaim for revocation and maintained the patent at issue as amended by an auxiliary request (hereinafter: the impugned decision).

5. Advanced Bionics and MED-EL each lodged two appeals against the impugned decision (Advanced Bionics: APL_9720/2025 UPC_CoA_178/2025 and APL_9718/2025 UPC_CoA_177/2025; MED-EL: APL_9633/2025 UPC_CoA_176/2025 and APL_9611/2025 UPC_CoA_175/2025). Both Advanced Bionics and MED-EL paid a court fee of € 20,000 for each of their appeals.

6. On 2 June 2025, Advanced Bionics filed a request to permit the withdrawal of the revocation action and the counterclaim for revocation. In addition, it requested that the Court of Appeal reimburse Advanced Bionics 60% of one of the two court fees paid in the appeal instance pursuant to R. 370.9(b) RoP, and 100% of the other court fee. It submitted that the parties agreed to the withdrawal and have mutually waived their rights to submit applications for a cost decision relating to the costs of representation.

7. In its response, MED-EL i) confirmed that the parties agreed to a withdrawal of the actions, ii) requested that the withdrawal of its appeals (APL_9633/2025 UPC_CoA_176/2025 and APL_9611/2025 UPC_CoA_175/2025) be allowed in the event that these appeals do not become void because of the withdrawal of the revocation action and the counterclaim for revocation, and iii) requested that MED-EL be reimbursed 60% of one of the two court fees paid in the appeal instance pursuant to R. 370.9(b) RoP, and 100% of the other court fee.

GROUNDS FOR THE DECISION

8. Pursuant to R. 265 RoP, as long as there is no final decision in an action, a claimant may apply to withdraw his action.

9. On application by Advanced Bionics and with the agreement of MED-EL, the Court of Appeal permits the withdrawal of the revocation action and the counterclaim for revocation.

10. A decision under R. 265.2(c) RoP as to the costs of withdrawal proceedings is not required, since the parties have waived their rights to submit applications for a cost decision relating to the costs of representation.

11. With the closure of the proceedings, the impugned decision will become ineffective and the appeals against the impugned decision will become devoid of purpose. It follows that it is not necessary to file a separate application for the withdrawal of the appeals, nor to decide on MED-EL's request ii).

12. The Court of Appeal will reject the parties' request for reimbursement of 100% of the court fee they paid for one of their appeals. Irrespective of the configuration of the Court's current case management system in workflows, a court fee was required for their appeals against the decision in the revocation action, as well as for their appeals against the decision on the counterclaim for revocation, since the revocation action and the counterclaim for revocation

are separate actions (cf. Art. 32(1) UPCA). The fact that the Court of First Instance combined its decisions in the two actions (ORD_598503/2023 and ORD_59103/2024) in a single document, does not alter this assessment.

13. The Court of Appeal will grant the parties' requests for reimbursement of 60% of the court fees for their two appeals to the amount of € 24,000 (€ 20,000 × 60% × 2), as the conditions of R. 370.9(b) RoP are met.

DECISION

The Court of Appeal:

I. permits the withdrawal of revocation action (ACT_576555/2023 UPC_CFI_338/2023) and the counterclaim for revocation (CC_15513/2024), and declares the proceedings closed;

II. orders that this decision be entered on the Register;

III. declares that there is no need for a cost decision;

IV. orders that 60% of the Court fees in the appeals APL_9720/2025 UPC_CoA_178/2025 and APL_9718/2025 UPC_CoA_177/2025 be reimbursed to Advanced Bionics;

V. orders that 60% of the Court fees in the appeals APL_9633/2025 UPC_CoA_176/2025 and APL_9611/2025 UPC_CoA_175/2025 be reimbursed to MED-EL;

VI. rejects the requests for further refunds of Court fees.

This order was issued on 3 July 2025.

KLAUS STEFAN MARTIN Grabinski

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Klaus Grabinski

President of the Court of Appeal

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Peter Blok

legally qualified judge and judge-rapporteur

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